



**Cheboi & 5 others v Kiptalai & 7 others (Environment & Land Case 530 of 2012) [2023] KEELC 15916 (KLR) (2 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 15916 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 530 OF 2012**

**EO OBAGA, J  
MARCH 2, 2023**

**BETWEEN**

**DANSON K CHEBOI ..... 1<sup>ST</sup> APPLICANT  
JOHN CHEPKURUI KOBOR ..... 2<sup>ND</sup> APPLICANT  
SAMWEL K CHEMWENO ..... 3<sup>RD</sup> APPLICANT  
SIMON SUTER CHESANG ..... 4<sup>TH</sup> APPLICANT  
DAVID K KANDA ..... 5<sup>TH</sup> APPLICANT  
WILSON T CHEBOI ..... 6<sup>TH</sup> APPLICANT**

**AND**

**CHESANG KIPTALAI ..... 1<sup>ST</sup> RESPONDENT  
EDWARD CHESANG ..... 2<sup>ND</sup> RESPONDENT  
JONATHAN C BIWOTT ..... 3<sup>RD</sup> RESPONDENT  
KIPRONO JAMES ..... 4<sup>TH</sup> RESPONDENT  
JULIUS RUTTO ..... 5<sup>TH</sup> RESPONDENT  
WILLIAM T CHEPKONGA ..... 6<sup>TH</sup> RESPONDENT  
KIPKORIR EDWARD ..... 7<sup>TH</sup> RESPONDENT  
THOMAS KIPKORE ..... 8<sup>TH</sup> RESPONDENT**

**RULING**

1. This is a ruling in respect of a Notice of Motion dated August 23, 2022 in which the Plaintiffs/Applicants seek the following orders:-



1. Spent
  2. Spent
  3. Spent
  4. There be a Stay of Execution of the Ruling delivered on May 26, 2021 and any further proceedings in this matter pending hearing and determination of the Appeal in Eldoret CACA No 107 of 2022.
  5. Costs of this Application are awarded to the Plaintiffs/Applicants.
2. The Applicants had filed a suit against the Defendants/ Respondents seeking declaratory orders and reference of the matter to arbitration. On 29<sup>th</sup> November, the Respondents filed a preliminary objection on the grounds that the suit was *res judicata* and an abuse of the process of the court and that the court did not have jurisdiction to entertain it.
  3. On September 29, 2017, the court delivered a ruling on the preliminary objection where it upheld the same and proceeded to strike out the suit. Three years later, the Applicants filed an application for review of the ruling of September 29, 2017. This application for review was dismissed vide a ruling delivered on May 26, 2021.
  4. Aggrieved by the ruling of May 26, 2021, the Applicants lodged an appeal to the Court of Appeal on June 9, 2021. The Applicants now contend that their appeal has high chances of success and that if stay of the ruling of May 26, 2021 is not granted, the Respondents will proceed to execute on costs whose bill has already been filed for taxation and this will render the appeal nugatory.
  5. The Respondents opposed the Applicants' application based on grounds of opposition filed on September 16, 2022. They contend that there is nothing capable of stay as what was given on May 26, 2021 is a negative order which is incapable of being stayed and that in any case, even if the Respondents executed for costs, this is a monetary claim which will not render the appeal nugatory.
  6. The Respondents further contend that the Applicants have not demonstrated what substantial loss they will suffer should stay not be granted.
  7. The parties were directed to file written submissions. The Applicants filed their submissions on November 15, 2022. The Respondents filed their submissions on December 16, 2022. I have considered the Applicants' application as well as the opposition to the same by the Respondents. I have also considered the submissions by the parties. The only issue for determination is whether the Applicants have met the threshold for grant of stay of execution.
  8. To begin with, the ruling of May 26, 2021 granted a negative order. The ruling merely dismissed the application for review. This being the case, there is nothing capable of being stayed. If the applicants' fears are on execution of costs, those costs have not been taxed and even if the costs were taxed and execution carried through, such execution will not render the appeal nugatory.
  9. I have looked at the bill of costs which before taxation is Kshs 98,230/= The Applicants have not demonstrated how payment of this sum or any lesser sum upon taxation will amount to substantial loss which is the cornerstone of grant of stay of execution. There is no demonstration that the Respondents will be incapable of refunding the costs should the appeal succeed.



10. In the case of *Kenya Shell Limited –Vs- Kibiru* (1986) KLR 410 it was held as follows:-

“It is not sufficient by merely stating that the sum of Shs. 20,380 is a lot of money and the Applicant would suffer loss if the money is paid. What sort of loss would this be? In an application of this nature, the applicant should show the damages it would suffer if the order for stay is not granted. By granting a stay would mean that status quo should remain as it were before judgement. What assurance can there be of appeal succeeding? On the other hand, granting the stay would be denying a successful litigant of the fruits of his judgement.”

11. It is clear from the above analysis that this application is devoid of merit. The same is dismissed with costs to the Respondents.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 2<sup>ND</sup> DAY OF MARCH, 2023.**

**E. O. OBAGA**

**JUDGE**

In the virtual presence of;

Mr. Mugare for Mwetich for Defendants/Respondents.

Court Assistant –Laban

**E. O. OBAGA**

**JUDGE**

